6.

1939-43 **File No.** 3367/36

E CLASS P. W. **DEPARTMENT**
I. **BRANCH**

Subject:— Irrigation Projects.

Procedure to be followed under the new constitution in dealing with.

B.K. 1943

File No. 3367/36-I.

Ltd. Secrt. Bkp. 21 A

G.R., G.D., No. 2408, dated 22-6-22.]

Correspondence

DOCKET SHEET

Subject :—

File No. 3369/36

P. W. DEPT.

9 BRANCH.

References :—

Date	To whom sent.	Notes and instructions.

No. 140/39-G.G.

Office of the Secretary to the Governor-General (Public).

From,

J.A. Thorne, Esquire, C.S.I., C.I.E., I.C.S.,
Secretary to the Governor-General (Public)

To,

The Secretary to His Excellency the Governor of Bombay.

New Delhi, the 11th February 1939.

Subject:- Procedure to be followed under the new constitution in dealing with irrigation projects, etc.

Sir,

I am directed to communicate for the information of His Excellency the Governor of Bombay the observations of the Governor General on an aspect of the procedure to be followed in undertaking Irrigation projects under the new constitution.

2. Under the new constitution, provision for settling disputes concerning water rights falling within the scope of section 130 of the Government of India Act has been made in sections 131-134 of the Act., An important point which arises in this connection is the possibility of a Province or a State preparing and going ahead with an irrigation project which later on might be found to effect another Province or State which was never consulted. The Province or the State adversely affected may in that event make a complaint under section 130 of the Act, and the Governor General may, after considering the report of the Commission appointed under sub-section(1) of section 131 to investigate the matter, pass orders under subsection (5) of that section that the project should either not be proceeded with or that it should be modified to meet the objections preferred. Or where a State is adversely affected and the prodecure laid down in sections 130-131 does not apply owing to the State being a non-Federated State or a Federated State which has made a declaration under section 134, it may be necessary for the Governor General to pass similar orders by virtue of sections 54(1)

Forwarded to the Deptt. to be noted.
Id.
24-3.

read with section 52 (1) (f). A contigency of this nature may lead to great loss to the Provine which had undertaken the construction of the project and it i is desirable to take steps to ensure so far as may be that such a contingency does not arise. A suitable safeguard against the risk of complaints uder section 130 of the Act or otherwise would be to consult the other Provinces and States who might be affected by a cohemplated irrigation work and to arrive at a settlement before the actual construction of the project is undertaken. I am to suggest that the point may be brought to the notice of the Hnnourable the Ministers if they have not already taken into consideration.

I have the honour to be,
Sir,
Your most obedient servant

Sd. J.A. Thorne.

Secy. to the Governor - General
(Public)

No. S-67.
GOVERNMENT HOUSE
BOMBAY
3rd March, 1939.

Dear M. Latthe,

I am directed to send you, for information, the accompanying copy of a letter No. 140/39-G.G., dated 11th February 1939, from the Secretary to the Governor -General (Public) on the procedure which it is suggested, would be appropreate in dealing with irrigation projects under the new constitution.

Yours sincerely,
Id.

The Hon'ble Mr. A.B. Latthe, M.A.,LL.B.

(I.B..) Submitted.

2. The instructions contained in the letter No. 140/39 G.G. dated the 11-2-39, from the Secy. to the Governor General (Public) have been noted for future guidance

Id.
25-4-39.

Record.

Id.
25-4-39.

Interference with water supplies, sections 130 to 134 of the Government of India, Act, 1935.

The reasons why special provisions have been included in the Government of India, Act 1935, on the subject of interference with water supplies will be found in paragpaphs 223 to 226 of the Report of the Joint Select Committee.

2. The deciding authority is the Governor General in his discretion, and not (as under the old Act) the Government of India, . A complaint made under section 130 should be addressed by the approporiate department of the Provincial Government to the Secretary to the Governor , General(Public).

3. It should be noted that, whereas the Governor-General is not obliged invariably to refer to the Commission all the matters to which the complaint relates, he is precluded from making a reference which goes beyond, the terms of the complaint. The complaint should therefore be complete, and complete ely intelligible in itself. It should also coform with the requirements of section 130, and state specially whether it is a complaint relating to executive action which has been or is proposed to be taken, or to legislation which has been or is proposed to be passed, or to the failure of any authority to excercise any of its powers or to a combination of these things. It will ordinarily be helpful if the complaint concludes with a succinct statement of the several issues involved. A party complained against may though there is no statutory obligation on the Governor General to follow this course- except to be asked to put in a rejoinder on the analogy of the presentation of a written

statement in a civil suit, before the Commission begins its work, as this procedure will normally shorten and simplify the investigation of the dispute by the Commission.

4. The Governor-General has to be satisfied that the issues involved are of sufficient importance to warrant the appointment of a Commission. It is not possible to define in general the elements that would invest a dispute with such importance. But since a Provincial Government whose interests (or the interests of any of whose inhabitants) have been, or are likely to be, seriously affected may be expected to make every possible effort to adjust points of difference by discussion with the other Province concerned, resort to the Governor General without the taking of such preliminary steps would cast doubts on the importance of the dispute. It would therefore be convenient that the complaint should state what attempts at adjustment have been made, and with what results. If the matters in dispute have been, wholly or in part, the subject of previous decision by an authority it should be explained why such decision is no longer appropriate or acceptable.

5. As long as Part II of the Act is not brought into force no Indian State comes within the scope of sections 130 to 134. But it may be happen that a State is interested in a dispute between Provinces on which action is being taken under the sections above mentioned; though section 131 (2) does not indicate the procedure to be followed by a Commission appointed by the Governor General, a full and proper investigation of such a dispute might not be possible without every interested unit beig given the fullest opportunity of being heard.

6. Subsection (5) of section 131 provides that the decision in a dispute investigated by a Commissionshall be given by the Governor General, unless he is requested by the Government of any Province or the Ruler of any State affected to refer the matter to His Majesty in Council.

The words "Province or State affected " in subsections(5), (6) and (7) include, in the opinion of the Governr General, only a Province or a State which was a party to the complaint which gave rise to the appointment of the Commission; as no State can formally be a party, as long as Part II of the Act is not brought into force, it follows that no Stant can make a valid request under subsection (5), but it would be open to a State interested in an inter- Provincial dispute, which had put its case before a Commission in the manner indicated in the preceding paragraph, to forward a representation to the Crown Representatives on the Commissions report The effect of a request under subsection (5) from a Province affected is to shift the jurisdiction to give the original dicision on the dispute as a whole from the Governor General to His Majesty in Council. Subsections (1) and (2) of section 309 are then applicable, that is to say a draft Order in Council must be laid before Parliament.

Below copy of a Note regarding the procedure to be followed in inter-Provincial water disputes.

No. S. 67.
Office of the Secretary to the Governor.
Government House.
Bombay, 24th February 1943.

Forwarded with compliments to:-

The Political & Services Department,
The Revenue Department,
The Public Works Department,

With reference to this office endorsement No. S. 67, dated the 3rd March 1939.

2. The making of a complaint under section 130 of the Government of India Act, 1935, is not a step to be taken except in the last resort, when all attempts at settling the dispute by negotiation have failed. A preliminary intimation, with a fairly full description of the dispute, of any intention on the part of this Government to make a complaint

complaint under section 130 of the Act, should be forwarded to this office and orders awaited before any further action is taken.

By order of the Governor of Bombay,

Id.

for Secretary to the Governr of Bombay.

3367/36.
4331

I.B.

Submitted for information.

2. The instructions contained in para 2 of the Secy. to the Governor's endt. overpage have been noted.

Id.
26-2-43.

Id. 26-3-43. Id. -27-3-43. Id. 24-3-43.

Sd.
14-4-56.

Id.
24-2-43.

INPujare
3/7/56